



DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2016-0034]

Notification of Decision to Authorize the Importation of Pummelo From Thailand Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, Department of Agriculture (USDA).

ACTION: Final rulemaking action; notification of decision to import.

SUMMARY: We are advising the public of our decision to authorize the importation into the continental United States of fresh pummelo fruit from Thailand. Based on the findings of a pest risk analysis, which we made available to the public for review and comment, we have determined that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh pummelo fruit from Thailand.

DATES: The articles covered by this notification may be authorized for importation after [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Ms. Claudia A. Ferguson, M.S., Senior Regulatory Policy Coordinator, Imports, Regulations, and Manuals, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2352.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart L—Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests.

On March 29, 2018, we published in the *Federal Register* (83 FR 13433-13436, Docket No. APHIS-2016-0034) a proposal¹ to amend the regulations by allowing for the importation of commercially produced fresh pummelo (*Citrus maxima* (Berm.) Merr.) fruit from Thailand into the continental United States.

We solicited comments concerning our proposal for 60 days ending May 29, 2018. We received seven comments by that date. They were from producers, industry groups, private citizens, and a State department of agriculture. They are discussed below by topic.

Comments on the Pest Risk Assessment

We prepared a pest risk assessment and a risk management document (RMD) in connection with our proposal. Based on the findings of the pest risk assessment, we determined that measures beyond standard port of entry inspection would be required to mitigate the risks posed by these pests. These measures are identified in the RMD and were used as the basis for the requirements included in the proposed rule.

One commenter, from the Florida Department of Agriculture and Consumer Services, Division of Plant Industry, stated that U.S. stakeholders from those areas potentially affected by any pest or disease outbreak from imported commodities should be invited to participate in site visits prior to the issuance of any proposals such as the one finalized by this document.

¹ To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov> and enter APHIS-2016-0034 in the Search field.

APHIS is committed to a transparent process and an inclusive role for stakeholders in our risk analysis process. However, since this comment relates to the structure of APHIS' overall risk analysis process, and not to the importation of fresh pummelo fruit from Thailand, it is outside the scope of the current action.

The same commenter observed that the pest risk assessment as a whole is based upon the assumption that the required post-harvest irradiation treatment may occur either in Thailand or upon arrival in the United States. The commenter went on to point out an inconsistency in the way in which we assessed the phytosanitary risk associated with Tephritidae species (*Bactrocera correcta* Bezzi, *Bactrocera cucurbitae* Coquillett, *Bactrocera dorsalis* Hendel, *Bactrocera papayae* Drew & Hancock, *Bactrocera tau* Walker, and *Monacrostichus citricola* Bezzi in the list of actionable pests). The commenter pointed out that the likelihood of these pests surviving post-harvest processing before shipment was rated as negligible due to the required irradiation treatment, but that the likelihood of the pests surviving transport and storage conditions of the consignment was marked not applicable, which indicated to the commenter that the risk associated with Tephritidae species was analyzed using the assumption that the fresh pummelo fruit would be treated with irradiation in Thailand only and not upon arrival in the United States after transport. The commenter recommended that the analysis be updated with any risk associated transit and storage of those shipments treated upon arrival or that it be altered to specify that risk was considered based on the presumption of irradiation treatment in Thailand only.

We agree with the commenter's point and have updated the pest risk assessment to reflect the risk presented by pests potentially surviving transport and storage conditions of the consignment in the event that post-harvest irradiation treatment is not performed in Thailand. This change may be found on page 23 of the updated pest risk assessment.

Comments on Phytosanitary Issues

We proposed to require that fresh pummelo fruit from Thailand be subject to a systems approach that includes irradiation treatment, packinghouse processing requirements, and port of entry inspection. We also proposed that the fruit be imported only in commercial consignments and be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of Thailand. One commenter said that these measures are not 100 percent effective in preventing the entry of actionable pests. Another commenter requested that fresh pummelo fruit from Thailand not be allowed into the State of Florida and other ports of entry south of the 39th parallel given that the climate in those areas is conducive to the establishment of the listed pests and the State of Florida's history of damaging incursions by invasive pests associated with the importation of foreign commodities.

We have determined, for the reasons described in the RMD that accompanied the proposed rule, that the measures specified in the RMD will effectively mitigate the risk associated with the importation of fresh pummelo fruit from Thailand. The commenters did not provide any evidence suggesting that the mitigations are not effective. Therefore, we are not taking the action requested by the commenters.

The pest risk assessment identified 21 actionable pests that could be introduced into the United States in consignments of fresh pummelo fruit from Thailand. We provided a list of those pests in the proposed rule and its supporting documentation. One commenter said that the proposed rule did not mention invasive species, focusing only on actionable pests. The commenter argued that we should provide a full list of potentially invasive species associated with this action. Another commenter argued that the pest risk assessment we prepared was too narrow in scope, and should take into account the potential adverse effects of actionable pests on all known and potential hosts of those pests.

The term "actionable pest" includes those species known to be invasive, but also includes a larger group of pests since a species does not have to be recognized as invasive in order to

cause harm. Actionable pests include quarantine pests, regulated non-quarantine pests, pests considered for or under official control, and pests that require evaluation for regulatory action. The wider scope described by the second commenter was therefore built into the pest risk assessment and RMD. Actionable pests in this case are those known to be associated with fresh pummelo fruit and present in Thailand.

Fresh pummelo fruit from Thailand will be required to be treated with a minimum absorbed irradiation dose of 400 Gy in accordance with § 305.9 of the phytosanitary treatment regulations in 7 CFR part 305. This is the established generic dose for all insect pests except pupae and adults of the order Lepidoptera. A commenter cited the presence of three Lepidopteran pests (*Citripestis sagittiferella* Moore, *Prays citri* Millière, and *Prays endocarpa* Meyrick) in the list of actionable pests as an indication that the phytosanitary risk associated with the importation of fresh pummelo fruit from Thailand is too high.

The systems approach includes other phytosanitary procedures designed to provide protection from pests against which irradiation is not effective. In addition, irradiation in conjunction with other mitigations against Lepidopteran pests can provide phytosanitary protection since it is lethal to larvae, tends to prevent normal adult emergence from the pupal stage, and causes sterility in pupae and emerged adults.

Two commenters requested assurance that actionable pests will not be introduced into the United States in connection with the pallets used in the shipment of fresh pummelo fruit from Thailand or via transshipment through countries not included in the pest risk assessment and RMD.

Wood packaging material, including pallets, used for the importation of commodities is governed by the regulations in 7 CFR 319.40-3(b), which stipulates treatment and marking. For the reasons explained in the proposed rule, the RMD, and this document, we consider the required provisions adequate to mitigate the risk associated with the importation of fresh pummelo fruit from Thailand. The commenters did not provide any evidence suggesting that the mitigations are individually or collectively ineffective. Failure to adhere to program standards, including packaging transshipped fruits, may result in removal from the export program.

One commenter observed that fresh pummelo fruit imported into Canada is currently not allowed to enter the United States for phytosanitary reasons and questioned the wisdom of allowing the fruit to directly enter the United States.

Each country determines its own importation requirements based on a number of factors, including factors particular to that country. While there may be some similarities in each country's phytosanitary approach, the requirements are not always identical. The requirements established by this document are country- and commodity-specific for the importation of fresh pummelo fruit from Thailand into the continental United States.

Comments on Trade and Economic Factors

One commenter expressed concern that recent APHIS trade and policy efforts have tended to favor facilitating import access to the U.S. market.

APHIS' phytosanitary evaluation process only begins once a country's NPPO has submitted a formal request for market access for a particular commodity. APHIS does not solicit such requests, nor do we control which countries submit requests. APHIS' primary responsibility with regard to international import trade is to identify and manage the phytosanitary risks associated with importing commodities. When we determine that the risk associated with the importation of a commodity can be successfully mitigated, as is the case regarding the importation of fresh pummelo fruit from Thailand, it is our responsibility under the trade agreements to which we are a signatory, such as the World Trade Organization's Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), to provide for the importation of that commodity.

Another commenter said that allowing for the importation of fresh pummelo fruit from Thailand may not produce a positive effect on the U.S. economy or domestic producers. Two commenters stated that there is a sufficient domestically produced supply of fresh pummelo fruit to meet current market demand and hypothesized that the lower cost of imported fresh pummelo fruit would serve to harm domestic producers.

APHIS' statutory authority allows us to prohibit the importation of a fruit or vegetable into the United States only if we determine that the prohibition is necessary in order to prevent the introduction or dissemination of a plant pest or noxious weed within the United States. As a signatory to the SPS Agreement, the United States has agreed to base its decisionmaking process on evaluation and mitigation of phytosanitary risk and not on the economic and trade factors referenced by the commenter. As we discuss later in this document, however, available data does not suggest that fresh pummelo fruit from Thailand will be imported at a lower cost than domestic production.

Two commenters objected to our requirement that the fresh pummelo fruit originate from commercial farms and stated that such a requirement would effectively exclude the majority of farmers in Thailand while encouraging the development of large scale, monoculture farms. One of the commenters cited a USDA requirement of \$350,000 net income as the minimum amount needed for classification as a commercial farm.

We proposed to allow only commercial consignments of fresh pummelo fruit from Thailand to be accepted for importation into the continental United States. Commercial consignments, as defined in § 319.56-2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packing, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer. The size of the farm² of origin is not a factor in determining whether or not a given consignment is commercial.

One commenter stated that Federal and State resources intended to protect domestic agriculture production have not kept pace with the growing volume of fruit and vegetable imports, placing strain on the system.

APHIS has reviewed its resources and consulted with U.S. Customs and Border Protection and believes there is adequate coverage across the United States to ensure compliance with APHIS regulations, including the importation of pummelo from Thailand, as established by this action. The commenter did not provide any evidence of shortfalls in State resources that would prevent APHIS from carrying out the provisions of this action.

A commenter said that the economic analysis that accompanied the proposed rule did not reflect the potential financial impacts of pummelo producers in Florida. The commenter said

² The \$350,000 figure is a standard used by USDA's Economic Research Service in the course of their own research as the dividing line between small and midsize domestic farms. APHIS does not use this measure; we instead rely on Small Business Association standards to identify small entities potentially affected by our rules.

that allowing for the importation of fresh pummelo fruit from Thailand at the same time of year that domestic fruit comes to market would result in negative economic impacts for Florida growers.

The commenter cited the importation of fresh pummelo fruit from Southeast Asia into Canada as an example of what may happen to the U.S. fresh pummelo market, stating that imported fruit in Canada has been marketed at a price far lower than U.S. domestic growers can achieve. The commenter predicted that the price of fresh pummelo fruit in the Canadian market is an indicator of future U.S. prices for imported pummelos and consequently greatly harm domestic growers.

While our trade decisions are made based on science rather than economic factors, we note that we stated in the economic analysis that accompanied the proposed rule that information on pummelo production in Arizona, Florida, and Texas was not available. In addition, U.S. import and export data specific to pummelo are also not available because pummelo is grouped with grapefruit in Department of Commerce trade statistics (Harmonized Tariff Schedule 080540). As always, APHIS welcomes informed comment on the size and scope of any industry for which we do not have data.

In response to the commenter's concerns, we examined the market for fresh pummelo fruit in Canada and determined that Canada imported an average of 36,379 metric tons per year during the period 2017 through 2020. Of this, 44 percent originated in the United States, and 0.003 percent (or 124 metric tons) originated from Thailand. During that period, the average price Canadian importers paid overall for fresh pummelo fruit was \$990 per metric ton, the average price Canadian importers paid for fresh pummelo fruit from the United States was \$989 per metric ton, and the average price Canadian importers paid for fresh pummelo fruit from Thailand was \$2,030 per metric ton. Based on this data, we do not agree with the commenter's claim that U.S. pummelo fruit is at a competitive price disadvantage in the Canadian market in relation to imported fresh pummelo fruit from Thailand. Our available Canadian data suggests

Thailand's share of the domestic pummelo market within the United States will be minimal, compared to domestic production, and Thailand will not be able to market the fruit at a price point below that of domestic producers.

Finally, we note that the proposed rule was issued prior to the October 15, 2018, effective date of a final rule³ that revised the regulations in § 319.56-4 by broadening an existing performance standard to provide for approval of all new fruits and vegetables for importation into the United States using a notice-based process. That final rule also specified that region- or commodity-specific phytosanitary requirements for fruits and vegetables would no longer be found in the regulations, but instead in APHIS' Fruits and Vegetables Import Requirements (FAVIR) database. With those changes to the regulations, we cannot issue the final regulations as contemplated in our March 2018 proposed rule and are therefore discontinuing that rulemaking without a final rule. Instead, it is necessary for us to finalize this action through the issuance of a notification.

Therefore, in accordance with the regulations in § 319.56-4(c)(3)(iii), we are announcing our decision to authorize the importation into the continental United States of fresh pummelo fruit from Thailand subject to the following phytosanitary measures, which will be listed in FAVIR, available at <https://epermits.aphis.usda.gov/manual>:

- The fresh pummelo fruit must be shipped in commercial consignments only.
- The fresh pummelo fruit must be treated with irradiation in accordance with 7 CFR part 305.
- Prior to packing, the fresh pummelo fruit must be washed, brushed, disinfested, submerged in surfactant, treated for *Xanthomonas citri* Gabriel *et al.* with an APHIS-approved surface disinfectant, and treated for *Phyllosticta citriasiana* and *Phyllosticta citricarpa* with an APHIS-approved fungicide.

³ 83 FR 46627 (September 14, 2018). To view the final rule, go to <https://www.regulations.gov> and enter APHIS-2010-0082 in the Search field.

- Each shipment of fresh pummelo fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Thailand. If the fresh pummelo fruit was irradiated in Thailand, each consignment of fruit must be inspected jointly in Thailand by APHIS and the NPPO of Thailand, and the phytosanitary certificate must contain an additional declaration attesting to irradiation of the fresh pummelo fruit in accordance with 7 CFR part 305. If the fresh pummelo fruit will be irradiated upon arrival into the continental United States, joint inspection in Thailand and an additional declaration on the phytosanitary certificate are not required.
- Consignments of fresh pummelo fruit from Thailand are subject to inspection at ports of entry in the continental United States.

In addition to these specific measures, fresh pummelo fruit from Thailand will be subject to the general requirements listed in § 319.56-3 that are applicable to the importation of all fruits and vegetables.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the burden and recordkeeping requirements associated with this action are covered under the Office of Management and Budget control number 0579-0049, which is updated every 3 years during the required renewal period. We estimate the total annual burden to be 24 hours.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this action, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Specialist, at (301) 851-2483.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 4th day of November 2021.

Mark Davidson

Acting Administrator, Animal and Plant Health Inspection Service.

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